

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
TERRY G. GARRETT and	§	CASE NO. 400-45220-DML-13
SUSAN GARRETT	§	Hearing Date: 1-31-2002 11:00 A.M.
Debtor(s)	§	

TERRY G. GARRETT and	§
SUSAN GARRETT	§
Movant(s)	§
	§
VS.	§
	§
WELLS FARGO BANK, N.A.	§
Respondent(s)	§

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

A hearing was held on January 31, 2002, regarding the Motion for Contempt and Sanctions for the Wilful Violation of Automatic Stay and Brief in Support Thereof (the "Motion"), filed by Terry and Susan Garrett ("Movants") against Wells Fargo Bank, N.A. ("Well Fargo). After having heard testimony, considered the pleading on file as well as the evidence presented, the Court finds as follows:

FINDINGS OF FACT

1. Movants filed Chapter 13 bankruptcy on October 2, 2000.
2. Movants' Chapter 13 plan was confirmed on September 13, 2001.
3. On September 24, 2001 Movants opened an account with Wells Fargo.
4. Wells Fargo was aware on September 24 and at all times thereafter that Movants were debtors in a Chapter 13 bankruptcy based on being advised of the fact by Movants; Wells Fargo

denied Movants' request for overdraft protection based on Movants being in a Chapter 13 bankruptcy.

5. Wells Fargo prepared a letter advising Movants of the closing of their checking account on November 14, 2001.

6. Wells Fargo mailed its letter on November 16, 2001.

7. Wells Fargo's letter stated that there would be a cashier's check issued to Movants for the balance of their account on November 22, 2001; the check, however, was not issued by Wells Fargo until December 2001.

8. Wells Fargo's letter was received by Movants on November 20, 2001; the check from Wells Fargo was received by Movants on December 11, 2001.

9. Wells Fargo froze Movants' checking account on November 14, 2001.

10. Wells Fargo, other than the November 14, 2001 letter, made no other effort to notify Movants of its intention.

11. Movants made two additional deposits into the frozen account without being informed of the frozen or closed status of their account; Wells Fargo accepted the deposits.

12. Despite request by Movants, Wells Fargo refused to allow withdrawal of any funds by Movants.

13. Wells Fargo dishonored checks written by Movants between October 31, 2001 and November 20, 2001. The amount of the dishonored checks exceeded \$1,100, and Movants had adequate funds on deposit at all relevant dates to cover the dishonored checks.

14. Movants have incurred charges and fees in the amount of \$732.16 based on their checks having been dishonored by Wells Fargo.

15. As a result of the time required to deal with the problems caused by Wells Fargo, Susan Garrett lost \$384.00 in wages.

16. Movants suffered embarrassment, humiliation, psychological injury and added harm to their reputation among their creditors as a result of dishonor of their checks.

17. One of Movants' dishonored checks has been turned over to the Tarrant County Criminal District Attorney's Office for prosecution.

18. The funds in the account were property of the estate pursuant to 11 U.S.C. § 541 and § 1306 or § 1327 and the confirmed plan.

19. Wells Fargo violated the automatic stay by exercising control over funds in the account after November 14, 2001. 11 U.S.C. § 362(a)(3).

20. Wells Fargo's violation of the automatic stay was willful or the result of reckless disregard of the facts and the law; Wells Fargo had no right (or belief that it had the right) to exercise control over Movants funds after November 14, 2001.

21. Movants incurred attorneys fees in pursuit of this Motion, which Wells Fargo chose to contest.

CONCLUSIONS OF LAW

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334(a) and (e) and 28 U.S.C. §157 (a) and (b)(2)(A) and (O).

2. A willful violation of the automatic stay is subject to sanction under 11 U.S.C. §362(h). *Flynn v. IRS (In re Flynn)*, 169 B.R. 1007 (Bankr S.D. Ga. 1994)(Section 362(h) creates independent federal bankruptcy cause of action which is based exclusively upon violation of the automatic stay).

3. A “willful violation” does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant’s actions which violated the stay were intentional. Whether the party believed in good faith that it had the right to hold or exercise control over the property is not relevant to whether the act was “willful” or whether compensation must be awarded. *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 482 (9th Cir. 1989).

4. Wells Fargo willfully violated the stay and its violation therefore is within the scope of 11 U.S.C. §362(h).

5. Well Fargo’s wrongful conduct in violation of the stay is exacerbated by its acceptance of deposits after freezing and determining to close Movants’ accounts coupled with its failure to return those deposits.

6. Where appropriate any finding of fact may be considered a conclusion of law and vice versa.

Based on the foregoing , it is therefore

ORDERED, ADJUDGED and DECREED that:

- A. Wells Fargo pay Movants the sum of \$384.00 for lost wages.
- B. Wells Fargo pay Movants the sum of \$732.16 for incurred charges and fees associated with the dishonored checks.
- C. Wells Fargo pay Movants the sum of \$500 as punitive damages given Movants’ embarrassment, humiliation, psychological injury and harm to their reputation with their creditors.

- D. Wells Fargo shall apologize to Movants in the form of a letter to be written by the highest ranking officer of Wells Fargo in the state of Texas for the sequence of events that it put into action in order that Movants may prove to their creditors that Wells Fargo improperly caused their checks to be dishonored through no fault of Movants.
- E. To the extent possible and consistent with applicable law and rules, Wells Fargo shall assist Movants in disposing of the criminal charges under consideration by Tarrant County Criminal District Attorney's Office. Should Wells Fargo not wish to intercede or is unsuccessful in dissuading the Tarrant County Criminal District Attorney's Office from proceeding with its case, then Wells Fargo shall reimburse Movants for reasonable attorney's fees they incur in dealing with Tarrant County Criminal District Attorney's Office.
- F. Wells Fargo shall pay the reasonable legal fees incurred by Movants in prosecuting this Motion. The reimbursement process will proceed as follows: (a) Venable & Vida, LLP shall provide counsel for Wells Fargo with a detail of all legal services rendered; (b) Wells Fargo may either pay the bill or challenge it before this Court; (c) an unsuccessful challenge by Wells Fargo will entitle Venable & Vida, LLP, to further recovery for defending against Wells Fargo's unsuccessful challenge.

SIGNED this the _____ day of February, 2002.

DENNIS MICHAEL LYNN

UNITED STATES BANKRUPTCY JUDGE